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DIVISION II

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STATE OF WASHINGTON

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NO. 51441-9-II

Court Of Appeals, Division II
Of The State Of Washington

In Re Marriage Of
Robert Wood, Appellant
And
Angelina Wood, Respondent.

Brief of Appellant

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I. ASSIGNMENTS OF ERROR

A. Decree of Dissolution: The Trial Court erred and abused its discretion:

1. By ordering spousal maintenance for four (4) years, (6 years including the temporary order), for a 16 year marriage.
2. By ordering spousal maintenance beyond Wife's need, awarding Wife 44% percentage of Husband's income.
3. When it ordered a disproportionate division of assets in this 16 year marriage, and failed to consider Wife's separate inheritance.
4. When it awarded the SBP when no request was made, or ruled upon at trial.
5. When it ordered Husband to obtain life insurance to secure spousal maintenance, when it was not requested at trial, or ruled upon at trial.
6. By entering a judgment in the amount of \$2,534.51 for *unpaid* maintenance, child support, or extra-curricular activities. (Section 1 of the Decree) and the judgment of \$2400 in the Child support order or unpaid support.
7. By awarding attorney fees in the amount of \$10,000 at trial without proof of legal fees incurred or that Husband had the ability to pay those fees.
8. When it refused to order Wife to pay on the Chase Credit Card account (part of the record) in spite of the parties' agreement that she pay on this debt.
9. When it ordered Husband to pay for the deficiency for the loan on the Cadillac SRX (Wife's vehicle).
10. When it failed to characterize post-separation payments made on the Cadillac SRX, Angelina's cell phone, vehicle insurance, and her life insurance as maintenance.

B. **Findings of Fact and Conclusions of Law:** The Trial Court erred and abused its discretion when it:

1. Entered a finding that Wife's attorney fees were reasonable when no proof of fees was submitted.
2. Entered a finding that a disproportionate share of the marital assets is fair and equitable.

C. **Child Support Order:** The Trial Court erred and abused its discretion when it:

1. Entered a judgment for past due support of \$2,400 when proof was submitted that payments were made for Alison Wood.
2. Entered a judgment for unpaid "expenses" submitted by Wife (without any supporting documentation) raised for the first time in the third post-decree presentation hearing.
3. Entered an order on post-secondary support at the presentation hearing, after it ruled that this issue be addressed at family law hearing.
4. Ordered post-secondary support without considering any evidence set forth in RCW 26.19.090 or Robert's child support obligation for his two other children.
5. Failed to impute Wife at full time income in calculating support and when it failed to deduct Federal taxes from Husband retirement and employment income, as ordered by the court.

D. Whether Husband is entitled to an award for costs and attorney fees on appeal.

II. **ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

DECREE OF DISSOLUTION

- A. Was the court's award of spousal maintenance for 4 additional years, at 44% of Robert's income and the

disproportionate award of the marital assets beyond Robert's ability to pay, under RCW 26.09.090.

- B. Was the court justified under RCW 26.09.090, to order an additional \$1200 in spousal maintenance at trial, when the financial circumstances of the parties had not changed since the entry of the temporary order?
- C. Did the court commit error when it ordered that Angelina is awarded the SBP to the military retirement and a life insurance policy when it was not testified to, requested, or ordered by the trial court, until presentation hearing on September 29?
- D. Did the court commit error when it ordered a judgment of \$2,534.51 against Robert, for unpaid expenses that were not raised at trial, but post-trial, without proof/receipts?
- E. Did the court commit error when it did not credit Robert for payments toward the Cadillac SRX, A debt Angelina was required to pay under the temporary order of September 15, 2015, *and* when it awarded him the loan deficiency after she failed to pay it?
- F. Did the court commit error when it did not credit Robert for paying Angelina's expenses such as car insurance and cell phone bill, when she refused to pay this?
- G. Did the court commit error when it refused to assign the debt on the Chase credit card, even though Robert testified to its existence at trial?
- H. Did the court commit error when it ordered attorney fees of \$10,000, after ordering spousal maintenance, excluding child support and post-secondary support, of 44% of Robert's income, and after awarding Angelina a disproportionate share of the marital assets?
- I. Did the court commit error when it ordered fees of \$10,000 without the submission of an affidavit/proof of expenses incurred?

CHILD SUPPORT

- J. Did the court fail to deduct mandatory taxes from his employment income and military retirement as required under RCW 26.19.071?
- K. Did the court abuse its discretion by not using Angelina's actual hourly wage of \$16.66, required under RCW 26.19.071 (6) in calculating support?
- L. Was the court's calculation of post-secondary support of \$700 per month proper after it acknowledged that it did not have enough information to determine support, and directed the parties to schedule a hearing before a family law calendar?
 - 1. Was the court's order of post-secondary support proper when it failed to consider, most if not all of the factors set forth in RCW 26.19.090, such as the scholarships/aid received by the child, and actual cost of attendance?
 - 2. Was the court's exclusion of the college student from the child support worksheet proper in determining post-secondary support?
- M. Did the court commit error when it entered a judgment of \$2400 of unpaid support when proof of payment was provided to the court?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- A. Did the court abuse its discretion when it found that awarding Angelina a greater proportionate of the marital assets, separate property, and an increase in spousal maintenance for 4 additional years was a fair and equitable distribution?

III. STATEMENT OF FACTS and PROCEDURE

This is a marriage of intermediate duration (16 years). (RP 57)¹ The parties married on March 8, 1998 and separated on July 11, 2014. (RP 57) The parties have three children. (2RP 48) A temporary order entered on September 15, 2015, required that Robert pay \$1,575.00 in child support and \$2,750 in spousal maintenance. (RP 158, CP 110) The court found that Robert's net income (after payment of \$2,750 in maintenance paid to Angelina) was \$5,454.00 and Angelina's net income (including the \$2,750), was \$3,906.00. (CP 7) In the final order, the court did not impute Angelina at full-time at her hourly rate of \$16.66; it imputed her at \$12.01 per hour. (CP 69) Since the temporary order was entered the eldest child (hereafter "Alison"), turned 18 and was emancipated on or about May 2016. (RP 161-62) No motion for post-secondary support was filed by Angelina; this issue was only reserved in the temporary order. (CP 9) Robert stopped paying support for Alison after her graduation as it was presumed to terminate, absent a motion. (RP 161) Alison received the benefit of Robert's GI Bill for 12 months of school. (RP 161, CP 62-63) It was testified by Angelina that Alison is a sophomore at Colorado Mesa University. (2 RP 9) The cost of school education and other expenses, was not testified to at trial.

¹ There are two parts to the trial transcript : Kathy Beehler and Aurora Shackell. References for the first transcript by Ms. Beehler shall be designated as RP___; for the second transcript by Ms. Shackell shall be designated as 2RP___.

Maintenance and Property

At trial, the court ordered spousal maintenance of \$2750, even after Angelina was awarded the military retirement of \$1200. (2 RP 54) (the temporary order, the military retirement was included in maintenance of \$2750)² In effect, the court ordered the transfer of \$3950.00 to Angelina for four years (excluding child support and post-secondary support). (CP 49, 55) Robert's net pay is \$6199.72; \$2750 is 44% of his net income. (CP 69, 72)

It is not disputed that Robert's income is gross \$3298, that he receives VA income of \$1845.13, net and \$2186.23, gross, in retirement income. (CP 72)

Gross Pay	3298.00 (19.03 per hour)
Military Retirement	2186.23 (3386.23 – 1200)
VA disability (net)	1845.13
Federal	(-241.28)
FICA (SS + Med)	(-561.20)
Dues (mandatory)	(-29.41)
Pension (mandatory)	(-148.00)
Retirement (voluntary)	(-150.00)
Net Pay	6,199.72

These amounts account for the \$1200 in military retirement Angelina will receive. (RP 114, CP 72)

The values of the parties' assets were not disputed. (Ex. 27)

In addition to the increase in spousal maintenance and extension of

² The court ruled, "the court is going to continue the *currently ordered amount* for a period of four years from the time the final orders are entered." (2 RP 54)

support, the court awarded Angelina a disproportionate share of the assets, giving her 58% or \$202,490.84. (CP 55, Ex. 27) She was also awarded her separate assets of \$20,440.67. (CP 44) Robert was awarded 42%, or \$145,389.00. (CP 53, Ex. 27)

Child Support/Post-Secondary Support

Child support orders were entered for two children in the child support worksheet (Megan and Robert Jr.), and post-secondary support was ordered separately for Alison. (CP 69, 63) The court ordered that Robert pay \$700 per month when Alison is no longer covered under the GI Bill. (CP 63)

Robert's GI Bill was awarded to Alison for the first year (12 months) of school, and the court ordered that he pay support of \$770 for the three months after her graduation in 2016 (June, July and August) and \$700, *per month* for "year 2 and beyond." (CP 63, 143) Robert provided proof of payment of those amounts. (CP 101) Robert also paid \$770 for May 2017 and September 2017, even though Alison received the GI Bill for those specific months (and a stipend); he did not receive credit for this. (CP 38, 125)

The court did not provide a basis for the award of \$700 or \$770 or how it was calculated. (CP 63) At the presentation hearing on May 12, the court ordered that the issue of post-secondary

support be resolved at a show cause hearing.³ (CP 134, CP 17)

Additionally, the court ruled that each party pay their proportionate share of Alison's post-secondary costs, accounting for loans, scholarships, and other awards. (2 RP 51) This factor was not considered as the court modified its ruling at the presentation hearing. These are serious errors by the court.

Attorney Fees

The court ordered Robert pay Angelina \$10,000 in attorney fees, in addition to the attorney fees of \$5000 awarded to her in the temporary order. (RP 93, RP 123) No fee affidavit, or testimony was provided to the court regarding of the fees incurred or Angelina's need for attorney's fees as a basis for this award.

Cadillac deficiency/other debts

The court ordered that Angelina pay on the note for the Cadillac SRX, the used by her in the dissolution. (CP 111, RP 195) Angelina failed to make the payments, requiring Robert to make the payments. (RP 113, CP 170) When it was repossessed, the court ordered that Robert pay the deficiency on that loan. (CP 57)

The court refused to address a credit card in Robert's name that was used by Angelina and her former paramour, at the

³ Clerk entry of hearing on May 12, 2017, states "ordered child support order with two children in the home and reserved post-secondary to be determined on family law calendar with intention that both parties shall contribute proportionately (GI Bill shall remain in effect for first year)." (CP 17)

presentation hearing. (CP 133) This debt was also listed under Exhibit 27 in Robert's proposed division of assets and debts. (Ex. 27) It is not disputed that Angelina had been paying on this debt (or her paramour), at \$300 per month; still the court refused to allocate this debt to either party. (CP 234-42) This debt was incurred after the parties' separation. (CP 234-42)

Additional Judgments in Decree and Child Support Order

Robert requests a reversal of the judgment of \$2,534.51 entered for "attorney fees" in the Decree. (CP 47) Angelina submitted a list of expenses with no supporting documentation of these expenses at the third presentation hearing. (CP 156) The second judgment of \$2100 was entered in the child support order for past due child support for Alison.⁴ (CP 59) The Court stated that it did not read submissions by Robert for the *second time* at a presentation hearing and adopted Angelina's proposed final orders, awarding two judgments. (CP 157) Proof of payment was provided to the court regarding payments made to Angelina for Alison, however. (CP 223-32)

Added language in Final Orders not in the ruling

The court awarded Angelina the Survivor Benefit designation for the military pension. (CP 53) She did not request this at trial,

⁴ The amount was initially \$2100 after it was modified by Angelina's counsel or the court, after Robert's counsel signed it. Ms. Perlman noted on the record that the amount not paid, allegedly, was \$2100. (CP 144)

nor was it ruled upon by the court, until at presentation. (CP 53, 51) The court also ordered that Robert obtain a life insurance policy for Angelina to secure payment of spousal maintenance. (CP 51) This was not ruled upon nor requested through testimony by either party. Robert's counsel submitted his objection to the inclusion of this language, but the court refused to hear argument. (CP 160).

IV. ARGUMENT

A. Standard of Review

The standard of whether to appeal a trial court's ruling is substantial evidence. Marriage of Rockwell, 141 Wn.App.235, 242, 170 P.3rd 572 (2007). Evidence is substantial if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the finding. Marriage of Griswold, 112 Wn.App, 333, 339, 48 P.3d 1018 (2002).

A reviewing court must find that the trial court's decision was manifestly unreasonable or was based on untenable grounds or untenable reasons. Marriage of Thompson, 32 Wn.App.179 (1982). An appeals court is required to confirm or reject the trial court's decision if it is shown that there was a manifest abuse of discretion. Marriage of Horner, 151 Wn.2d at 893. "An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court." Griggs v. Averbek, Inc., 92 Wn.2d 576 584, 599 P.2d 1289.

B. The Decree of Dissolution should not have entered a maintenance award at 44% of his net income *and award* a disproportionate share of the marital assets, leaving him without sufficient resources to meet his own needs and other financial obligations.

Maintenance awards are reviewed for abuse of discretion which occurs when the court “does not base its award on a fair consideration of the factors under RCW 26.09.090.” In re Marriage of Marietta, 129 Wn.App. 607, 624, 120 P.3d 75 (Div. III, 2005) (reversing maintenance award); Accord, In re Marriage of Sheffer, 60 Wn.App. 51, 53, 57-58 & n.2, 802 P.2d 817 (1990) (court reversed maintenance award because trial court failed to consider the parties’ standard of living and post dissolution economic conditions that would result from the property division and maintenance awarded).

The Decree of Dissolution awarded Angelina spousal maintenance for 4 years, beyond the two years it had already ordered under a temporary order. (CP 49) At trial, Angelina was earning more income than she was earning at the hearing on temporary orders on September 15, 2015; still, the court ordered four additional years *and* increased the award by \$1200 in maintenance. (CP 49, 110, 2 RP 54) Robert’s income or financial circumstances did not change since the temporary order hearing. (CP 7, 60) Additionally, it ordered a disproportionate division of the marital assets; awarding Angelina 58% of the assets, and 42% to

Robert, *and* it ordered that Robert pay on the debt for the Cadillac SRX; a debt she was already ordered to pay. (Ex. 27, CP 57)

In the temporary order, the court ordered \$2750 in spousal maintenance and this amount *included* her share of the military retirement. (CP 110) The trial court effectively ordered that Robert pay 44% of his net pay each month. (Ex. 27)

Gross Pay	3298.00 (19.03 per hour)
Military Retirement	2186.23 (3386.23 – 1200)
VA disability (net)	1845.13
Federal	(-241.28)
FICA (SS + Med)	(-561.20)
Dues (mandatory)	(-29.41)
Pension (mandatory)	(-148.00)
Retirement (voluntary)	(-150.00)
Net Pay	6,199.72

Still, the court did not state its reason for increasing spousal maintenance by \$1200 where the only difference at trial was that Angelina was earning more income as a para-educator earning a higher hourly wage of \$16.66. (2 RP 18)

Here, the court abused its discretion when it increased maintenance by \$1200, ordered child support of \$1071.08 and \$700 per month in post-secondary support, resulting in a transfer payment of \$4,521.08 (\$2750 + 1071.08 + 700). ***This left Robert with \$1,678.64 per month with which to meet his basic expenses and other financial obligations.*** Clearly, the court

failed to consider the statutory factors set forth in RCW 26.09.090 in determining maintenance.

1. Duration the marriage.

This is a marriage of intermediate duration. A long-term marriage is one of 25 years or more. In re Marriage of Rockwell, 141 Wash.App. 235, 243, 170 P.3d 572, 576 (2007). This is not a long-term marriage.

2. Angelina's age, physical and emotional condition and financial obligations of the spouse seeking maintenance

Angelina was 42 years old and obtained training since the parties' separation to become a para-educator for special needs students. (Ex. 22, 2 RP 48-49) There was no testimony that Angelina had any physical, emotional or mental disabilities preventing her from working full-time or going to school. In fact, Angelina started a new relationship *before* separating from Robert, and jointly acquired credit card debt with that paramour.⁵ (CP 234-42) At the time of the parties' separation, there was no debt except for the debt on the marital residence and her vehicle, the Cadillac SRX. (RP 111) Angelina also incurred post-separation debts on

⁵ This is the Chase credit card listed in Exhibit 27 submitted by Robert. It is not disputed that Angelina's paramour incurred this debt (it is a separate debt incurred after separation) and that the paramour is paying \$300 per month. (Ex.27)

the Discover credit card and Chase credit card in spite of receiving financial support from Robert⁶. (2 RP 11-12, RP 111)

Angelina stopped making payments on her vehicle (Cadillac SRX), and Robert made those payments. (2 RP 45, CP 168) The court then ordered Robert to pay the deficiency on that loan after it was repossessed in spite of the previous court order requiring her to make the payments. (CP 57)

The marital residence was sold and Angelina received 100% of the proceeds from that sale. (Ex. 27, CP 58) Angelina testified at trial that she intended to sell it immediately and that there was \$65,000 in equity in the home. (RP 191) Angelina had minimal financial obligations at the time of the entry of final orders. (CP 58, Ex. 27)

3. The financial resources of the party seeking maintenance including separate and community property apportioned to Angelina.

A trial court's primary concern is the economic circumstances of the parties subsequent to the dissolution. In re Marriage of Williams, 84 Wash App. 263, 268, 927 P.2d 679 (1996), *review denied*, 131 Wash.2d 1025, 937 P.2d 1102 (1997). Here, the court, awarded Angelina a disproportionate share of the marital assets, *her separate assets of \$20,000* from an inheritance

⁶ Not only did Robert pay spousal maintenance and child support, but he paid his proportionate share of any and all expenses related to the children's sports and extra-curricular activities. Robert also paid for Angelina's cell phone bill, insurance, and car payments even though she was ordered to pay on those expenses. (CP 38)

received during the marriage, increased her spousal maintenance and ordered an additional 4 years. (CP 55-56, Ex. 27)

The trial court must consider the division of property, notably, the assets of the awarded to the party seeking maintenance. In re Marriage of Crosetto, 82 Wn.App. 545, 548, 918 P.2d 954 (1996).

Angelina was awarded 58% of the marital assets consisting of a 100% interest in the marital home, multiple financial accounts as well as 50% of the marital share of the military retirement. (CP 55-56) Robert also paid his proportionate share of the children's extra-curricular activities, sports uniforms, and non-emergency medical expenses related to the children. (CP 10) Angelina's net income (after trial), was more than double than Robert's income after the transfer of maintenance, child support, and post-secondary support. (CP 7, 61, 63, 69) Not only would Angelina have the ability to maintain her basic expenses and those of the children, but she will enjoy a significantly higher standard of living than Robert.

Angelina works "full-time," (earning \$1704 is below minimum wage), at \$16.66 per hour.⁷ (2 RP 18) Angelina testified that she earned \$16.66 per hour. (2 RP 18) This issue was raised again at

⁷ Angelina misrepresented to the court that her hourly wage was 12.01 at a presentation hearing (CP 141-42).

the presentation hearing but the court imputed her at \$12.11 per hour at 40 hours per week. (CP 72, 141-42)

When a party receives more than an equal share of the marital assets, this may result in a less significant spousal maintenance award. In re Marriage of Washburn, 101 Wn.2d 168, 182, 677 P.2d 152 (1984) (trial court award a significant maintenance award to compensate for the unequal division of marital assets). In re Marriage of Crosetto, 82 Wn.App 545, 548. Here, Robert was awarded less than his 50% share of marital assets, had no other separate property, and was required to pay on the only marital asset remaining, Cadillac SRX, after Angelina refused to abide by the court's order and pay this obligation. Additionally, Robert is required to pay on the Chase credit card, Angelina's post-separation debt because the court refused to address this issue.⁸

The disproportionate division of the property should have been a factor in the trial court's award of maintenance, and the court's failure to consider this an abuse of discretion and a gross disregard of the facts of this case.

4. The time necessary for Angelina to acquire sufficient education or training to enable Angelina to find employment appropriate to her skill, interests, lifestyle and other circumstances.

⁸ The trial court ruled that this debt could not be addressed in the Decree, because the court did not recall testimony about it. However, it was, in fact, testified to. (Ex. 27, RP 11, 116).

Angelina obtained the necessary training or certification to become employed as a special education para educator for the North Thurston School District in September 2016. (2 RP 49, Ex. 22) Angelina expressed an intent to go to online schooling but she stated that she wasn't "*sure how [she] go about that or what's the best idea.*" (2RP 12). The parties had been separated for over 2 years, yet she took no action to research any educational plans for a future career path. (2 RP 12-13) This lack of initiative was part of her plan to maximize her chances to obtain spousal maintenance.

Admittedly, Angelina worked as a stay-at-home mother for most of the marriage and also worked sporadically.⁹ (2 RP 126-138) She followed her husband for the first 10 years of the marriage; for the last 6 years, however, she made the choice to live separate and apart from Robert and could have started school or a new career. (RP 59-61, RP 130-133, 135-136, 138). At trial, she did not have any idea as to a career path or type of degree she intended on pursuing with "online schooling." (2 RP 12) During Robert's last deployment in 2008, Robert was deployed to Iraq, before he returned to New Mexico to his next duty station in 2009. (RP 135-137, RP 58-60) Robert discussed this relocation with

⁹ Robert and Angelina testified that Angelina worked during the marriage, as a cook, receptionist, a sub for schools, and for a real estate office, yet the court stated that Angelina "first started working in the fall of 2016, and that was the first paying job she's held since Alison was born." This is inaccurate. (2 RP 49) (RP 184-185)

Angelina and he believed that Angelina would move there with the children. (RP 59-60) Angelina did not follow him to that duty station for an unknown reason. (RP 60) When Robert relocated to California following his retirement from the Navy, Angelina did not follow him there either¹⁰. (RP 61) Finally, Robert relocated to Washington in February 2014, Angelina's state of residence, to be closer to his children, taking a position as a bus driver, in the summer of 2014. (RP 62-64)

Angelina did not relocate and follow her husband and had ample opportunity to obtain full-time employment or further her education during this time.¹¹ (RP 59-64) Generally, military spouses are unable to find stable employment or attend school because of the instability of having to relocate to multiple duty stations. Here, there were not these obstacles during the latter part of the marriage; still, Angelina chose not to take any initiative toward either objective.

Robert should not have been penalized for Angelina's lack of initiative or refusal to find stable full-time employment for 6 years during the marriage (and 3 years subsequent to the formal date of separation) through the award of a disproportionate division of assets and 4 years of maintenance at 44% of Robert's income. In

¹⁰ Robert testified that he chose to find employment in California because Angelina was from there and expressed a desire to move there; she did not relocate when Robert was offered employment in Livermore, California. (RP 61-62)

¹¹ All three children were also school-age. (CP 6)

2008, Angelina was in her early thirties, and could have started a career or started school; however she remained unemployed until shortly after the entry of temporary orders. She is 4 years younger than her husband, at the age of 42 (at the time of trial), and has more working years left than her husband.

The court determined that Angelina was not a minimum wage level worker and that Angelina testified herself, that she earned an hourly wage of \$16.66 per hour. (2 RP 18) Still, the court ruled that Angelina only earned only \$12.11 per hour. (CP 72) Angelina earns \$16.66 per hour and should be imputed at full-time at this wage for maintenance and child support purposes.

The court abused its discretion when it ruled that maintenance was ordered, 4 more years of it, to enable Angelina to obtain a degree she had not started or even contemplated at trial.

5. Standard of Living Established During the Marriage

The trial court did not consider the standard of living established during the marriage. The maintenance of this standard of living to which parties have become accustomed is not a test of need. Friedlander v. Friedlander, 80 Wash.2d 293, 297, 494 P.2d 208, 211 (1972). Contrary to the court's ruling that the parties maintained a standard of living that was "quite good" there was no testimony or evidence regarding the extent to which the standard of living was "quite good." (2 RP 54) The parties were able to maintain

monthly expenses, purchase a home, and acquire a modest retirement. (Ex. 27, CP 47-58) The most significant asset in this case was Robert's military retirement. (Exhibit 27)

The parties purchased a residence in Washington, and continued to have a substantial mortgage on it at trial. (RP 88-89, Ex. 27) There was no testimony by the parties taking vacations, lavish shopping sprees, or the spending of funds on personal care such as plastic surgeries or trips to the spa. The parties acquired minimal debt, aside from a car payment and the mortgage. For 6 years of the marriage, the parties resided in two separate households, thus limiting standard of living of households for both Angelina and Robert.

After separation, Angelina received child support, maintenance and payment from Robert for his proportionate share of the extra-curricular activities, and \$5000 in attorney fees. (RP 116) She failed to follow the court order requiring her to pay her car payment on the Cadillac SRX, her cell phone and her insurance. (RP 159) She also incurred charges on a Chase Credit Card, with her paramour, and a Discover credit card. (2RP 11, RP 116) Angelina continued to remain unemployed from July 2014 (date of separation) until September 2016 and continued to incur debt. (RP 182)

The court abused its discretion when it determined that the parties established a standard of living that was “quite good” justifying an *increase* in the amount of spousal maintenance and the extension of it for 4 more years.

6. Ability of Robert to meet his needs and financial obligations while meeting Angelina’s needs

The trial court failed to make a finding that Robert had the ability to pay *an additional \$1200* in spousal maintenance. Not only was his spousal maintenance *increased* for four additional years, but he was required to pay post-secondary support for Alison, *and* assume the loan deficiency for a debt that Angelina was ordered to pay. (CP 47-58)

The court found that Robert earned \$19.03 per hour and accounted for military retirement, his VA disability in determining spousal maintenance. (2 RP 49) Robert’s income is the following:

Gross Pay	3298.00 (19.03 per hour)
Military Retirement	2186.23 (3386.23 – 1200)
VA disability (net)	1845.13
Federal	(-241.28)
FICA (SS + Med)	(-561.20)
Dues (mandatory)	(-29.41)
Pension (mandatory)	(-148.00)
Retirement (voluntary)	(-150.00)
Net Pay	6,199.72

It is grossly unfair to leave Robert with \$1678.64 to pay for his living expenses and other financial obligations. It appears that the ruling in “*ordering maintenance to continue for 4 more years*”

may have been an inadvertent error, as the court indicated it wanted to continue the status quo of \$2750 per month. (2RP 54) A motion for reconsideration to address this issue was not filed in this case because the court refused to hear any argument by Robert at the presentation hearings. (2 RP 160) In two subsequent presentation hearings, the court made is starkly clear that it did not want to hear argument from Robert or to address issues even if he had raised them in a timely filed motion. (2 RP 160)¹²

For example, in the second presentation hearing on September 15, 2017, and Robert objected to additional language that was added by Angelina, as it was not ordered or ruled upon by the trial court. (2 RP 60, CP 152, 160) When Robert submitted proof of payment of child support and attorney fees to the court, it indicated that it did not have time to review documents submitted by Robert. (CP 139, 146, 157). Robert raised the issue of new language added to Angelina's proposed orders *only because* she added new language, not ruled upon by the court at the presentation hearing on September 15. (CP 160)

When Robert showed that he paid the court-ordered amount of \$10,000 in attorney fees, the court stated that it had not read his

¹² The court indicated that it made findings and disregarded proof of payment. The court referenced its inadequate and ambiguous ruling and offered no substantive rulings. It stated that it had not reviewed Robert's documents even though they were timely filed. (CP 139, 146, 157)

materials or submissions.¹³ (CP 126-128) Angelina further indicated that there were payments of “other things” not paid by Robert, yet she was unprepared for that hearing to show the court what was not paid.¹⁴ (CP 145) The parties waited for over 2.5 hours to be heard for the presentation hearing, but because Angelina was not prepared for that hearing, and because the judge had another obligation that day requiring her to leave court early, the presentation hearing was set over, again. (CP 145)

At the third presentation hearing, the court reviewed a list of expenses, prepared by Angelina, allegedly incurred by Angelina and asked that a judgment is entered against Robert, through an offset from the \$10,000 paid by him. (CP 158-160) The court heard argument on that issue only and then prevented Robert from raising any other issues, including new language added by Angelina from the initial presentation hearing. (CP 160) The court considered Angelina’s declaration (a Word Document with no receipts) of “expenses” as accurate and ordered that Robert pay his share of those expenses. (CP 36-40)

At three presentation hearings, the court was unwilling to address any further issues, or ambiguities in the court’s ruling and

¹³ It was noted on the record that Robert’s submissions and proof of payment was submitted timely for the hearing. (CP 126-128).

¹⁴ The court provided Ms. Perlman an opportunity to provide proof of amounts not paid and delay entry of order because she was unprepared. “I am going to give Ms. Perlman an opportunity to verify each and every penny that Mr. Wood has paid. (CP 145).

informed Robert to appeal the case if there was a dispute. For this reason, Robert's only remedy was to address these issues through this appeal.

It was highly unusual and very disappointing for a party to be continually deprived of the ability to request clarification of a trial court's contradictory rulings, when that party *timely filed* pleadings and motions pursuant to court rules.¹⁵ The court contradicted itself in multiple rulings for reasons unknown. As a result, Robert was required to expend thousands of dollars to seek relief through the appeals process.

C. The court erred in determining Robert's income for the purpose of child support because it failed to deduct mandatory taxes to derive his net income.

Trial Exhibit 21 reflects military retirement received by Robert. (Ex. 21) Trial Exhibit 20 reflects Robert's monthly income from his job as a bus driver. (Ex. 20) Both exhibits reflect the deduction of federal taxes each month.

The court ordered at presentation on September 15, 2017, that the federal taxes for the military retirement should be deducted from Robert's share, by the agreement of the parties. (CP 142) Angelina's share of the military retirement deducted taxes to derive her net income. (CP 69)

¹⁵ No motion for reconsideration was filed because the court indicated on the record that if there was a dispute, Robert would have to seek a remedy with an appeal. (CP 160)

However, the court adopted Angelina's proposed worksheets, reflecting that the VA income of \$1845.13 and military retirement of \$2,186.23, under "other income" with no taxes deducted. (CP 160) Angelina's counsel agreed that federal taxes should be taken out:

Counsel for Wife: (page 6 Lines 4-7) *Ms. Forrest is correct that I did not take taxes out of Mr. Wood's retirement. I didn't take it out of his retirement or his disability and his retirement should have been taxed.* (CP 142)

RCW 26.19.071 requires that mandatory taxes are deducted for the purposes of calculating his/her net income for child support purposes. Taxes had not been deducted from Robert's income, in spite of an agreement on the record. (CP 142) The court ignored its ruling that taxes should be deducted and adopted Angelina's orders, even though they were incorrect.

D. The court abused its discretion by not imputing Angelina at her hourly wage of \$16.66 per hour.

At the presentation hearing, counsel for Angelina stated that she just learned that her client worked 7 hours per day. (CP 123) The pay stubs submitted under reflect that Angelina earns income \$1705.00 per month. (Ex. 22) Angelina testified that she earned \$16.66 per hour and her counsel affirmed this on the record. (2 RP 18, CP 123)

Counsel for Angelina Wood: Ms. Wood does earn \$16.68 an hour. (CP 123)

Counsel for Angelina Wood: And so the way we calculated Ms. Wood's fulltime income was she testified she worked about 6 1/2 hours a day. We took 6-1/2 hours, divided it by 1705 that she receives as income, figured out that her hourly rate was - - I believe it was 12.11, and that was what we used the calculated - - then extrapolated out to fulltime based on that hourly wage. (CP 123)

RCW 26.19.071 (6) states the court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. Imputing income to a voluntarily unemployed or underemployed parent is mandatory. RCW 26.19.071(6); *see also* In re Marriage of Goodell, 130 Wn.App. 381,390,122 P.3d 929 (2005); In re Marriage of Clarke, 112 Wn.App. 370, 48 P.3d 1032 (2002);

A parent cannot avoid obligations to his or her children by voluntarily remaining in a low paying job or by refusing to work at all. The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. RCW 26.19.071 (6); *See also* In re Brockopp, 78 Wn.App 441, 445, 898 P.2d 849 (1995). The court first determines whether or not a parent is voluntarily underemployed based upon the parent's work history, education, health, age, and other relevant factors. In re Marriage of Peterson, 80 Wash.App. 148, 153, 906 P .2d 1009 (1995). "If a parent is underemployed but also 'gainfully employed on a full-time basis,' the court must make a further determination as to whether

the parent is 'purposely underemployed to reduce the parent's child support obligation.'" Peterson, 80 Wash.App. at 153,906 P.2d 1009.

The court did not expressly find that Angelina was voluntarily under-employed, but by imputing Angelina at \$12.11 for a 40 hour work week, it implicitly found that she was, in fact, under-employed. Trial transcripts were not produced for the presentation hearing, however, public records and records from Angelina's school were also filed and submitted to the court; yet the court refused to impute her at her hourly rate of 16.68. (CP 32-35) As a consequence, Robert was required to pay a higher child support amount, including greater contribution the children's extra-curricular activities, education, and uninsured medical expenses. (CP 65-66)

This is the court's error and this ruling should be reversed. The appeals court should also note Counsel's misstatements to the court about her client's hourly wage in making its decision.

1. The court did not order payment of extra-curricular and education expenses.

The record must include testimony or evidence of costs related to the expenses in excess of the child support obligation. McCausland v. McCausland, 129 Wn. App. 390, 412, 118 P.3d 944. The court must also consider each parent's ability to pay those expenses, taking into account their total child support obligation. Id. (citing RCW 26.19.001, RCW 26.19.065(1)). Here,

the testimony and evidence was very clear that Robert does not have the ability to pay support in excess of the child support obligation.

Because Angelina has sole decision-making regarding the children, the financial impact on Robert is significant as he has no ability to make any decisions related to the children. Angelina recognized this on the record at presentation.

Counsel for Angelina Wood: She will need to inform and get input from the father regarding major decisions. Given the history, unless there is a financial impact, I think it is important that mother will continue with that. (CP 124)

The court should remand the issue of extra-curricular activities and all language that Robert will pay his proportionate share for *agreed upon* activities and education costs.

E. Post-Secondary Support

1. The court ordered post-secondary support without considering any evidence or testimony required under RCW 26.19.090.

In determining whether to order post-secondary support, the statute requires the consideration of numerous facts, including facts related to a child's aptitude for college, the parents' educational background, and the parents' ability to pay for college. RCW 26.19.090. Moreover, the legislative intent of child support is to insure that child support adequately meets the child's basic needs, it is equitably apportioned between the parents, and is

commensurate with the parents' financial ability to pay. RCW 26.19.001. With regard to post-secondary support, it is not mandatory as *child support presumptively terminates when the child reaches the age of majority*. RCW 26.09.170 (3) Post-secondary support may only be ordered upon compliance with statute, and filing this request with the court through a motion or petition before the child reaches majority. RCW 26.19.090.

The court retroactively ordered post-secondary support when it ordered it beginning in June 2016, without any consideration of the statutory factors at a hearing or at trial at the presentation hearing. (2 RP 52) At trial, there was no evidence presented at trial regarding Alison's education costs, receipt of financial aid/scholarships, whether she was in good standing, or other factors set forth under RCW 26.19.090.

Counsel for Robert Wood: You Honor, postsecondary education expenses. So, I'm a little but unclear as to how we do the math to figure out what's going on, because I believed there's some overlap between--- so we're ordering that he pay back amounts not paid so far? So we're ordering back child support, but we're also ordering a percentage of the tuition expenses, or what exactly are we doing with that? (2 RP 71-72)

Court: You know, I think I was unclear about that, and I apologize. I ordered that, for the first year for Alison, the GI Bill. ...Afterwards, frankly, there's two ways the court can set support. I don't know what support is – or excuse me the tuition is. And so for Alison, the court was intending to continue the current child support amount throughout the year. And if the parties want to address something different, they can bring that back on the court commissioner's calendar and have postsecondary support addressed that

way. I'm not going to order any amount for the two younger. I'm just reserving it. (2 RP 71-72)

Counsel for Robert Wood: I'm sorry, Your Honor, I don't think I'm much closer to understanding what we're doing. (2 RP 71-72)

Alison graduated in May 2016. (2 RP 9) In its ruling, the court ordered that Robert pay support for June 2016, July 2016, and August 2016 in the amount of \$770. (2 RP 56) Alison reached majority, yet the court ordered post-secondary support without considering any of the factors at trial or at a motion hearing. (2 RP 72-74) The court assumed Alison was dependent based on self-serving testimony by Angelina and retroactively ordered support for Alison.

Court: So I'm ordering Mr. Wood is going to continue to pay the currently ordered child support. He owes about eight or nine months that he stopped paying without the court's permission, and he's going to continue that until she's not in school. She needs to provide – and my guess is neither of the parents are going to be able to get this directly from the school – but she needs to provide she's attending and in good standing.

Counsel for Robert Wood: Is that money going to the school or the Mother?

Court: So let me back up for a minute. The GI Bill payments will go directly to the school. The child support amounts in addition to that will be only for the months, whether it's a full or partial month, that Alison is actually at home with mother. So, you're going to need to do some adjustments to the back support based on that. So I don't – I don't have that information. It wasn't testified to. So the GI Bill will cover all of her tuition, room and board; is that correct? So for the months that Alison was at home partially or fully, after she started college, the child support amount of 770, whatever it was that was deducted by the father will be paid to the

mother, so that will include the summer when she's home. And, actually, it will include from now on, because my understanding is that the GI Bill is just for the first year. I'm sorry that that was really unclear. (CP 134-135)

For post-secondary support, the legislative intent is that child support presumptively terminates when the child reaches the age of majority. RCW 26.19.001, RCW 26.09.170 (3) Here, Alison reached majority in May 2016, so *child support should have terminated at that point*. Post-secondary support was not ordered, but "reserved" in a temporary order entered in 2015. (CP 9) Angelina has the burden to file a motion to continue support, however she took no such action until the trial date in April 2017. The court's order requiring that Robert pay for those months should be reversed.

The court acknowledged in its ruling at presentation on May 12, that the issue of post-secondary support would be addressed at a hearing before the Family Law Commissioner to determine the amount. (CP 17) The court ordered post-secondary support, then ordered it at the rate of \$700 per month, without providing the parties with the basis for calculating this figure. (CP 63-64) The court did not consider any of the statutory factors, conduct any inquiry regarding the education costs or Robert's financial ability to pay.

There were also no submissions related to the cost of tuition, boarding, or books related to Alison's education costs, or evidence that Alison was in fact dependent; *the court reiterated this omission in its ruling*. There was no objective information related to whether Alison resided at home in Washington during the summer or regarding the financial aid/scholarships awarded to Alison.¹⁶ Further, no information was provided regarding her grades, proof that she was attending school full-time or whether she was in good academic standing.

2. The trial court entered an order on post-secondary support at the presentation hearing, after it ruled that this issue be addressed at family law hearing.

The court implicitly acknowledged that this information was not before the trial court, so it ordered that this issue be addressed on the Family Law docket. (CP 17, 134)

Court: With respect to the post-secondary education, I do think that that was left by me less than clear, and I apologize for that. *I am going to reserve post-secondary support, the specific amount to be determined on the family court – on the family law commissioner's calendar.* But the intention is that both parties will contribute in proportion to their incomes on the child support worksheets. (CP 134)

For the 2016 to 2017 school year, Robert assigned one-year (12 months) of his GI bill to Alison. (September 2016 to May 2017, plus three months for her 2nd year). (CP 63-64) Still, the court

¹⁶ The trial court ruled that financial aid and scholarships should be deducted from the amount of post-secondary support. 2RP 51.

ordered that Robert pay Angelina “post-secondary support” for June 2017, July 2017, and August 2017 in the amount of \$700¹⁷ per month. (CP 38, 2RP 73) In light of the court’s contradictory rulings, it continues remain unclear as to the basis of ordering 700 per month for those months. Retroactive post-secondary support for Alison should be reversed. Post-secondary support should also be reversed based on the court’s acknowledgment that it failed to consider most, if not all of the required factors set forth in the statute.

3. The court ordered that the child support order include all three children in calculating post-secondary support and child support.

Assuming arguendo, the court order requires that Robert pay post-secondary support, the support ordered should be considered in the support calculation for the two children, Megan and Johnny. RCW 26.19.011(1) (basic child support obligation to be "determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed"). A child receiving post-secondary child support is a child receiving support for purposes of the economic table. Here, Robert is ordered, under the child support order, to pay \$700 per month for

¹⁷ Robert paid \$770 for those months, because there was confusion as to how much was owed. (CP 38).

post-secondary. (CP 63-64) The court initially ruled that the child support, include all three children for whom support is owed.

Counsel for Robert Wood: So, Your Honor, as we recalculate child support, does she stay on the child support worksheets?

Court: What do you mean does she stay on the child support worksheets?

Counsel for Robert Wood: Presumably, there may be adjustments – I assume we're entering a new child support order going forward, so does she stay on the child support worksheets?

Court: Yes. (2 RP 73-74)

It appeared from the court's ruling that the \$700 would be paid during months when Alison is just home with Angelina, for summer break when she is not in school. Regarding the school year, the court ordered that Tuition and Room & Board (with deductions from financial aid and scholarships) be determined on the family law docket or by agreement. However, the child support order requires that it is paid every month during the school year, regardless of the cost of school, receipt of scholarships/financial aid, or contribution by Alison. This is contrary to the court's ruling. Additionally, the court ordered that the child support include only the two children and not all three of them. (CP 134)

Court: With respect to child support, there are currently two children in the home, and the court order - - the child support order should reflect that. (CP 134).

Child support is calculated based on the parents' incomes and the number of children being supported; all three of them. Robert's child support should be calculated accurately to reflect that he is paying "support" for three children, not just for Megan and Johnny. It is not clear whether the court was confused, absent-minded, or if it intended to modify the court ruling. The appeals court should reverse the order on post-secondary support, including the retroactive support for Alison as child support presumptively terminated when she reached majority, and because no testimony or evidence was considered by the trial court to award postsecondary support under RCW 26.19.090. If the appeals court decides that post-secondary support should be ordered, the court should remand this issue to the trial court, with a different judge, to address the amount, contribution of the parties (including Alison), and to order that all three children are included in the child support worksheet. Robert's ability to pay post-secondary support should be addressed as well.

F. Judgments

1. The court committed reversible error when it entered a judgment in the amount of \$2,534.51 for unpaid maintenance, child support, or extra-curricular activities. (Section 1 of the Decree) and the judgment of \$2100 in the child support order or unpaid support.

The court ordered a judgment in the amount of \$2,534.51 for amounts of unpaid "out-of-pocket" expenses at the third

presentation hearing on September 29, 2017. (CP 47) No mention was made or request was made by Angelina about past due out-of-pocket expenses *at trial or at the first presentation hearing on May 12, 2017*. At the presentation hearing on September 15, 2017, Robert provided proof to the court of his payment of attorney fees, and back support for June 2016, July 2016, August 2016, and June 2017, July 2017 and August 2017. (CP 223-233, CP 38)

Robert's payment of attorney fees and any past due child support ordered by the trial court should have been reflected in the Decree. Ms. Perlman acknowledged that proof of payment for June 2016, July 2016, and August 2016 on the record. (CP 144)

Counsel for Angelina Wood: It is an issue because while proof may have been provided, the issue is that there - - that is not all Mr. Wood owes each month. There is also maintenance and child support for the current children, and it is unclear if he is paying the money to past support or to current support. Well, he may have paid \$2100, he owes current ongoing obligations, and I'm not certain that he paid those in addition to the \$2,100. (CP 144)

Angelina proposed that a judgment of \$10,000 was included in the Decree and one in the amount of \$2100 in the support order at the September 15 presentation hearing in spite of Robert providing proof of payment because there *may be* unpaid amounts. This is ludicrous. Angelina was the recipient of child support, maintenance, and out of pocket expenses, and could provide no

proof of unpaid support or expenses at presentation on September 15.

The only “unpaid obligations” the court referenced in its ruling was the child support for Alison in 2016, after she graduated from high school and the summer months in 2017 when Alison wasn’t enrolled in school. (CP 223-233,38, 63-64) There was no testimony or evidence of unpaid out of pocket expenses, or any specific reference by the court in its ruling, about any other unpaid obligations, just that there were unpaid amounts at the presentation hearing or trial.

Angelina submitted a self-serving declaration of expenses for the children, with nothing to corroborate if those expenses were actually incurred. (CP 36-40) Still, Robert paid those expenses. The court ordered that Robert pay his proportionate share of those expenses *and* child support for Alison in May 2017 and September 2017; months he was not initially ordered to pay by the trial court because Alison received the GI Bill and the E-5 stipend each month. Again, this is another contradictory ruling by the court that financially penalizes Robert.

Those issues should have been addressed in a post-decree motion and Angelina should have been required to provide timely proof of those expenses such as receipts, prepared by Angelina a day before presentation hearing. Robert continued to pay on

Angelina's obligations such as the life insurance policy that she refused to cancel, her cell phone bill, and vehicle insurance. (CP 38) Robert deducted the accrued amounts from her maintenance in July 2017. (CP 38) She also failed to pay on the Cadillac SRX, as was ordered by the court since September 15, 2015, under a Temporary Order. (CP 15, 16, 170) Robert received no offset or credit for any of these payments. When the Cadillac was repossessed, he was ordered to pay the loan deficiency, and penalized further, while Angelina was rewarded for violating the court's order. (CP 57)

The court was willing to impose judgments on Robert and order that he pay additional obligations, yet was unwilling to hold Angelina financially accountable for debts and obligations she was required to pay. The court should reverse the judgment and required that Angeline file the appropriate motion with the family court to address the out-of-pocket expenses allegedly incurred by her.

2. The judgment of \$2100 was entered in error as there was proof of payment.

Support of \$700 for June, July and August of 2017 was submitted. (CP 223-233) Angelina left the judgment of \$2100 in the child support order, in spite of proof having been filed and stating on the record Angelina's receipt of those funds. (CP 144) This amount was modified by Angelina's counsel or the court after

Robert's counsel signed it. (CP 59) When Robert attempted to address this, the court cut him off.

Court: The Court is going to enter the proposed orders as Ms. Perlman just outlined. If folks are not pleased with - -

Counsel for Robert Wood: Can - -

Court: No - - with what the court ruled, you certainly have every right to file an appeal. I am going to enter the reduced judgment in the amount of \$2,534.51 and I'm signing final orders today.

Counsel for Robert Wood: There are other issues - (CP 160)

The court did not mention the entry of the judgment of \$2100 (or \$2400) in her ruling. A reconsideration motion was not filed because it became very evident that this court, would not preside in an impartial manner. Robert filed this appeal as a last resort at the direction of the court.

3. The trial court abused its discretion in failing to characterize post-separation payments made on the Cadillac SRX, Angelina's cell phone, vehicle insurance, and her life insurance as maintenance.

In addition to the child support and maintenance ordered by the court, Robert made payments on behalf of Angelina. Angelina testified that Robert deducted amounts from her maintenance because he was paying for other expenses. (RP 195, RP 159) Angelina also testified that she did not make payments on the Cadillac SRX. (RP 195)

In spite of a court order requiring Angelina to pay on the car note, she failed to do this, resulting in it being repossessed. (CP 41) Assigning Robert the debt, was inequitable and unfair.

Income earned by each party after separation is separate property. RCW 26.16.010 Angelina has never claimed a one-half interest in Robert's post-separation income. It was an abuse of discretion to treat payments made for the benefit of Angelina since the separation and failing to provide Robert with a credit. Robert requests remand for proper characterization of payments made post-separation as maintenance.

G. Additional orders

1. The trial court committed error when it refused to order Wife to pay on the Chase Credit Card account (part of the record) in spite of the parties' agreement that she pay on this debt

The court committed error when it refused to assign either party the debt on a Chase Credit Card. This is a credit card opened in Robert's name after separation. (CP 234-242) There was testimony of the existence of this debt, and it was included in Robert's proposed division, under Trial Exhibit 27. (RP 116, Ex. 27)

It was not disputed that Angelina's paramour, the person that incurred the debt on this card, was making \$300 payments monthly. (CP 234-242) The court ruled upon issues that were not requested or testified to, such as the payment of extra-curricular activities,

award of life insurance to Angelina, the award of SBP designation to Angelina, and the issue of post-secondary support. Refusing to rule on a debt that was testified to and as part of a trial exhibit is a serious error by the court and further evidence of the court's bias against Robert.

Given that Angelina has not disputed that she incurred the debt on the Chase Credit Card, and that her paramour is making monthly payments, the court should remand this issue and assign this debt to Angelina.

2. The court did not divide the military retirement or SBP designation.

Angelina failed to request a division of the military retirement, address this as a marital asset, or request the court award her the survivor benefit designation. It is Angelina's burden to request that she is awarded one-half of the military retirement, not the court's burden. (CP 133, 118)

Counsel for Angelina Wood: So with regard to the military retirement, I don't believe that - - my understanding was the Court had dealt with that issue. (CP 123)

A party can't assume that a court knows the identity of the marital assets. Each party has a duty to present the evidence and argument regarding the marital asset, and at a minimum request this at trial. Angelina failed to request that she is awarded part of the military retirement and the survivor benefit. The court should

reverse the award of both the military retirement and survivor benefit associated with such military retirement.

3. Life Insurance

The court adopted orders requiring that Robert obtain a life insurance policy to secure the maintenance obligation when it was not ordered by the court. (CP 51) The court denied Robert the opportunity to present argument on this issue it at both presentation hearings. (CP 160)

Angelina added this language in the Decree, because it is “just presumed” to be included in every dissolution. (CP 51) When considering Robert’s financial obligations, requiring Robert to pay additional funds for a life insurance policy is just not financially feasible. More important, it was not ordered by the court. The court should reverse the order requiring Robert to obtain a life insurance policy.

H. Attorney Fees

1. The court failed to weigh the financial circumstances of each party in determining whether attorney fees should be paid by Robert Wood

The trial court did not articulate an adequate basis for the award of attorney fees of \$10,000 to Angelina. It stated that Angelina had a need for it. The record reflects that she was earning \$16.66 per hour, received of 58% of the marital assets, maintenance, child support, military retirement, post-secondary

support and 100% of her separate property. No affidavit was presented to the court by Angelina regarding the amount of fees, other than her self-serving testimony. (2 RP 14)

When a court awards fees under RCW 26.09.140, a court must consider the financial circumstances of both parties. In re Marriage of Scanlon and Witrak, 109 Wash.App. 167, 34 P.3d 877 (2001). It is an abuse of discretion for a court to fail to consider the needs of one spouse, with the ability to pay of the other. In re Marriage of Nelson, 62 Wn.App. 515, 521 (1991). The burden of proving need for fees is on the party making the request. In re Marriage of Greenlee, 65 Wn.App. 703, 708. Proof of fees is necessary to support an award. In re Marriage of Estes, 84 Wn.App. 536 (1997).

After child support of 1071.08, post-secondary support of \$700 is paid, maintenance of \$2750, *Robert is left with approximately \$1,678.72 on which to live*. Angelina receives a net income of \$5,000.03, and this excludes the 1071.08 in child support and \$700 in post-secondary support. (\$6071.11). (CP 69) Robert's financial circumstances are substantially worse than Angelina after the dissolution, moving forward, yet the court found that he had the ability to pay. The court also failed to consider that Robert paid \$5000 in attorney fees under the temporary order. Awarding Angelina \$10,000 in fees, without any proof or affidavit, and the

court's failure to consider the parties' financial circumstances was an abuse of discretion.

2. The court should award attorney fees under RAP 18.1 and RCW 26.09.140.

Robert seeks attorney fees and costs associated with the filing of this appeal. RCW 26.09.140¹⁸ Attorney fees can be awarded when they are authorized by contract, statute, or some recognized ground for equity. In re the Matter of Kourtney Scheib, 160 Wn.App. 345, 249 P.3d 184, 188 (2011), citing Mellor v. Chamberlin, 100 Wash.2d 643, 649, 673 P.2d 610 (1983). If attorney fees are recoverable at trial, then the prevailing party may recover fees on appeal. Id., citing RAP 18.1, see also Landberg v. Carlson, 108 Wn.App. 749, 758, 33 P.3d 406 (2001).

RAP 14.2 provides in pertinent part that a commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review... RAP 14.2. The court should consider the abusive litigation by Angelina her failure to follow through on the court's orders¹⁹, her misrepresentations about her income²⁰, and her failure to follow through on the trial court's

¹⁸ Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." RCW 26.09.140

¹⁹ Angelina's counsel stated on the record that federal taxes should be deducted from income and military retirement, then she proposed orders that did not deduct the taxes. (CP 142)

²⁰ Angelina's counsel stated on the record that she earned \$16.68 per hour, at the May 12, 2017 hearing, then stated to the court that Angelina earned \$12.01 per hour. (CP 142)

rulings. It is one thing to advocate for a party, but to add language to final orders, not ordered by the court, to cause delay in presentation of final orders²¹, and to allow the inclusion of judgments in final orders knowing that no such monies are owed²², is bad faith.

It should be noted that the trial court bears responsibility for the cost of this appeal. From the court's refusal to read timely submitted motions and exhibits filed by Robert, to its refusal to hear argument about all of the contested issues are reasons that Robert had to incur the unnecessary legal expenses of this appeal. (CP 160) The court acknowledged that it did not read his submissions, then proceeded with the hearing. (CP 146, 147, 157, 133, 139) Then it adopted Angelina's orders, and refused to allow Robert's to address other about inconsistencies noted in his motions. (CP 160) The court also stated on the record that our remedy was an appeal; instead of a motion for reconsideration, noting its inclination to deny Robert the opportunity to present any arguments/questions in clarifying the court's ambiguous and confusing rulings.

²¹ Angelina alleged that additional monies were owed at the presentation hearing on September 15, but did not have this information for the court, causing further delay. (CP 144-146)

²² Angelina's counsel included a judgment for \$2,100 in the child support order, even though proof was provided that this amount was paid. Further, this amount was modified by Angelina's counsel or court to \$2400 (CP 44, 59)

The court's bias against Robert, or his counsel, was clearly apparent, resulting in the denial of basic due process. These blatant errors could have been easily rectified if the court read the pleadings, applied the law, and if Robert was afforded the opportunity to file a motion for reconsideration. The parties attended three motions for presentation, and the court failed to be prepared for all three of them or adjudicate the disputed issues in a fair and unbiased manner with regard to Robert.

Robert will submit his affidavit of financial need and the court can see that he does not have the funds to pay attorney fees to file this appeal or to respond to the cross-appeal. Robert requests he is awarded fees and costs.

V. CONCLUSION

The court clearly failed to apply the mandatory standards and statute in relation to the calculation of child support, post-secondary support, and spousal maintenance. These errors by the trial court have imposed an undue financial burden on Robert, and the court's ruling should be reversed and remanded to a different judge or venue. The judge in this case is either ignorant of the law, or has refused to apply the law. The judge in this case has demonstrated that it does not wish to hear this case or does not have the time to address the issues.

Robert has had to pay an additional \$2750 in spousal maintenance and post-secondary support, without knowing the actual cost for the education. The court should reverse the award of attorney fees as Robert does not have the ability to pay. Not only did the court find that Angelina's net income over half of Robert's income, it also awarded Angelina a disproportionate larger share of the marital assets. The appeals court should also award Robert attorney fees.

Submitted by:

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2018 FEB 12 PM 1:31

Kathleen A. Forrest, being first duly sworn oath, deposes
and says: that on the date given below, I served a copy of
Appellant Brief and this is Proof of Service on the following
persons:

STATE OF WASHINGTON

BY

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THE UNDERSIGNED declares under penalty of perjury of
the State of Washington that this Appellant Brief and Declaration of
Service was served on counsels for ANGELINA WOOD listed
above by deposit in the US Mail, Postage prepaid and addressed
on February 12, 2018.

Kathleen A. Forrest 2-12-18
Kathleen A. Forrest
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